

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

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|----------------------------|---|----------------------------------|
| KODY K. BURNETT, | : | |
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| Petitioner, | : | |
| | : | |
| V. | : | |
| | : | NO. 3:23-cv-00135-TES-CHW |
| UNNAMED RESPONDENT, | : | |
| | : | |
| Respondent. | : | |
| | : | |

ORDER OF DISMISSAL

Petitioner Kody K. Burnett, a prisoner in the Wheeler Correctional Facility in Alamo, Georgia, filed a 28 U.S.C. § 2254 habeas corpus petition. Pet. for Writ of Habeas Corpus, ECF No. 1. Petitioner also filed a motion for leave to proceed in this action *in forma pauperis*. Mot. to Proceed *In Forma Pauperis*, ECF No. 2. Thereafter, the United States Magistrate Judge denied Petitioner's motion for leave to proceed *in forma pauperis* and ordered Petitioner to pay the \$5.00 filing fee if he wanted to proceed with this action. Order, ECF No. 7. The Magistrate Judge gave Petitioner fourteen days to pay the filing fee and cautioned Petitioner that his failure to do so could result in this Court dismissing his petition. *Id.*

More than fourteen days passed after the Magistrate Judge entered that order, and Petitioner did not pay the filing fee or otherwise respond to the order. As a result, the Magistrate Judge ordered Petitioner to show cause why the Court should not dismiss this case based on his failure to comply with the earlier order. Order to Show Cause, ECF

No. 8. The Magistrate Judge gave Petitioner another fourteen days to respond and cautioned him that his failure to do so would likely result in the Court dismissing the petition. *Id.*

More than fourteen days have now passed since the Magistrate Judge entered the show cause order, and Petitioner has not responded to that order. Thus, because Petitioner has failed to comply with the previous orders or to otherwise prosecute his case, the Court now **DISMISSES** the complaint **WITHOUT PREJUDICE**. *See* Fed. R. Civ. P. 41(b); *Brown v. Tallahassee Police Dep't*, 205 F. App'x 802, 802 (11th Cir. 2006) (per curiam) (first citing Fed. R. Civ. P. 41(b); and then citing *Lopez v. Aransas Cnty. Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978)) ("The court may dismiss an action *sua sponte* under Rule 41(b) for failure to prosecute or failure to obey a court order.").

SO ORDERED, this 26th day of March, 2024.

S/ Tilman E. Self, III
TILMAN E. SELF, III, JUDGE
UNITED STATES DISTRICT COURT